

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* D A GONZALEZ, Minor.

UNPUBLISHED  
January 26, 2016

No. 328854  
St. Clair Circuit Court  
Family Division  
LC No. 15-000160-NA

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Before: STEPHENS, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to minor child, DG, pursuant to MCL 712A.19b(3)(g), (j), and (l). We affirm.

Respondent first argues that the trial court clearly erred when it found clear and convincing evidence to support termination of her parental rights under statutory grounds MCL 712A.19b(3)(g), (j), and (l). We disagree.

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). For termination of parental rights, the trial court must find that at least one of the statutory grounds set forth in MCL 712A.19b has been met by clear and convincing evidence. *In re Terry*, 240 Mich App 14, 21-22; 610 NW2d 563 (2000).

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) termination is in the child's best interests. MCR 3.977(F); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). In relevant part, MCL 712A.19b(3) states:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to

provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

\* \* \*

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

We note at the outset that respondent's challenge to the trial court's statutory grounds determination fails because respondent has not addressed the propriety of the court's finding of clear and convincing evidence to support termination under MCL 712A.19b(3)(l). An issue that is not properly raised and supported in a respondent's appellate brief is deemed abandoned and is not ordinarily considered on appeal. See *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009) (citation omitted) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority."); *People v Ackerman*, 257 Mich App 434, 450; 669 NW2d 818 (2003) ("the failure to cite any supporting legal authority constitutes abandonment of an issue"); *People v McMiller*, 202 Mich App 82, 83 n 1; 507 NW2d 812 (1993) (holding that an issue was abandoned when it was not raised in the statement of questions presented). In this case respondent's rights to a child were terminated pursuant to proceedings initiated under MCL 712A.2(b). Therefore, the trial court could not have clearly erred in finding that one of the statutory bases for termination was proven. MCL 712A.19b(3)(l); *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000). It is undisputed that respondent's parental rights to her first son were terminated in 2009 as a result of proceedings initiated under MCL 712A.2(b)(1) and (2). Accordingly, the trial court did not clearly err in determining that MCL 712A.19b(3)(l) had been established by clear and convincing evidence.

Additionally, we note that the trial court did not clearly err when it found further grounds for termination under subsections (g) and (j).

Termination under MCL 712A.19b(3)(g) requires clear and convincing evidence that (1) respondent failed to provide proper care and custody and (2) there is no reasonable likelihood that respondent will be able to provide proper care and custody within a reasonable time. *In re Laster*, 303 Mich App 485, 493; 845 NW2d 540 (2013). These termination proceedings were brought after DG was involved in a motor vehicle accident caused by respondent. Respondent admitted to Children's Protective Services worker Kathryn Jarvis that she had used heroin before picking up her four-year-old son, driving on the expressway, and rear-ending a utility truck. Respondent's mother testified that respondent's substance abuse problems began when respondent was 18 years old. Respondent was aged 37 at the time of the termination hearing. Her testimony therefore, painted a picture of nearly 20 years of substance abuse by respondent that was diametric to respondent's own testimony that she began abusing substances eight years

ago in 2007. The record clearly and convincingly supported a finding that respondent failed to provide proper care and custody for DG and would not be able to within a reasonable time.

Respondent's substance abuse certainly exposes DG to risk of harm. Respondent continues to struggle with substance abuse, despite numerous attempts at rehabilitation. There is also no evidence that respondent was employed or had suitable housing for DG. Respondent's mother testified that during DG's four years of life, he has moved in and moved out of her home four times. Clear and convincing evidence supported the trial court's conclusion that based on the conduct and capacity of respondent, there existed a reasonable likelihood that DG would be harmed if returned to his mother's care. Therefore, termination of respondent's parental rights was properly supported by statutory subsection MCL 712A.19b(3)(j).

Respondent also contends that the trial court clearly erred when it found that termination of her parental rights was in DG's best interests. Again, we disagree.

This Court reviews a trial court's decision for clear error regarding whether termination is in the child's best interests. *In re Trejo*, 462 Mich at 356-357. Whether termination of parental rights is in the children's best interest must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Once a statutory ground has been proven, the trial court must find that termination is in the child's best interest before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977. In considering whether termination of parental rights is in the best interests of the child, all available evidence on a wide variety of factors should be considered. *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014). These factors include the existence of a bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the child's well-being, and the possibility of adoption. *Id.*

We are not definitely and firmly convinced that the trial court made a mistake when it found that termination of respondent's parental rights was in DG's best interests. The trial court considered a wide variety of factors including the respondent's ability to parent, DG's well-being and the risk of harm if returned to his mother's care, as well as DG's need for permanency and stability. The trial court further considered respondent's long history of substance abuse, which included the use of crack cocaine during her pregnancy with her first son and methadone during her pregnancy with DG, and the fact that respondent had never successfully obtained control of her substance abuse problem. The trial court observed that "respondent mother continues to display the same harmful and destructive behaviors that led to the removal and termination of her parental rights of her previous child," and noted that the current petition was filed after she used heroin and caused a motor vehicle accident with four-year-old DG in the car. Indeed, as the trial court properly observed, "[i]t is difficult to imagine a more serious threat to the safety and wellbeing of [respondent's] young child."

Respondent unpersuasively argues that the trial court terminated her rights prematurely and failed to give proper weight to her recent attempt to address her substance abuse through enrollment in the Flint Odyssey House's inpatient treatment program. Although it is admirable

that respondent enrolled herself in yet another treatment program, termination may be in a child's best interests even in instances where the parent makes some progress in addressing her substance abuse issues when the evidence shows that it is unlikely that the child could be returned to the parent's home within the foreseeable future. *In re Frey*, 297 Mich App 242, 248–249; 824 NW2d 569 (2012).

Outside of respondent's substance abuse issues, there was no evidence that respondent had the ability to provide an appropriate home for DG. DG did not have appropriate clothing, his basic hygienic needs were not being met, and he was being fed meals exclusively obtained from fast food restaurants and gas stations. Respondent did not contest these allegations, which support the conclusion that DG's well-being would be better served outside the care and custody of his mother. Again, there was also no evidence that respondent had any source of income or possessed adequate housing.

We acknowledge that the testimony of respondent and respondent's mother established that respondent and DG maintained a strong bond. Respondent testified that she loved her son very much and wanted the opportunity to raise him. Respondent's mother also attested to a strong bond between DG and respondent, though she also stated that DG had not asked for his mother once since he was placed in his maternal grandmother's care, three months earlier on the date of the motor vehicle accident. The strength of a child's bond with his mother however, is only one factor among many that the trial court considers when it makes best interests determinations. The court also considered the likelihood that DG would be at risk for harm if returned to his mother's care and the lack of evidence that respondent would be able to provide permanent housing, proper nutrition, and appropriate clothing for DG. The trial court properly concluded that, "danger to [DG] when he is with his mother," and "the importance and need for [DG] to have a safe and stable home outweigh, by clear and convincing evidence, the bond between [DG] and his mom." Thus, given the totality of the circumstances, this Court is not definitely and firmly convinced that the trial court made a mistake when it found that terminating respondent's parental rights was in DG's best interests.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto